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**RESPONSE UNDER 37 CFR 1.116
EXPEDITED PROCEDURE
EXAMINING GROUP 3641**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Inventor : Mitchell R. Swartz

Serial no. 09/ 750,765

Filed: 12/28/00

For: **METHOD AND APPARATUS
TO CONTROL ISOTOPIC FUEL
LOADED WITHIN A MATERIAL**

This is a continuation of Serial no. 07/ 760,970

Filed: 09/17/1991

Group Art Unit: 3641

Examiner: Mr. Palabrica, R.J.

The Commissioner for Patents
Alexandria, VA 22313-1450

June 10, 2006

**PETITION TO THE COMMISSIONER
PURSUANT TO 37 C.F.R. 1.181**

1. This Petition is made pursuant to 37 C.F.R. 1.181 to the Commissioner of Patents, and is made to invoke his supervisory authority to correct a wrongful situation involving a "Notice of Abandonment" [Exhibits "A" and "B"; hereinafter simply 'Notices'], just received and dated 6/7/06. Pursuant to 37 C.F.R. 1.181, there is no fee. This Petition is reasonable based upon the reasons stated below, and the facts as discussed in the Declaration supporting this Petition.

2. In the discussion below, reference is made to Declaration of Dr. Mitchell Swartz (hereinafter called the "Swartz Declaration") dated June 10, 2006.

3. The Notices stated:

"7. The reason(s) below: The May 22, 2006 decision of the TC 3600 Director to dismiss applicant's 4/26/04 and 5/28/04 petitions, included a directive to the examiner to hold the instant application abandoned.

and

"1. Applicant's failure to timely file a proper reply to the Office letter mailed on 31 March 2004.

As to item 1) above, appellant did not properly reply to the examiner's 3/31/04 Notice of Non-compliance of the second Appeal Brief. On May 22, 2006, the TC 3600 Director dismissed applicant's 4/26/04 and 5/28/04 petitions traversing said Notice of Non-compliance. This decision also included a directive to the examiner to hold the instant application abandoned."

4. First, these statements are not accurate. The following reasons demonstrate disingenuity in the Office consistent with systematic obstruction of justice. As stated in the Swartz Declaration,

"(T)he Office's Notices of Abandonment dated 6/7/06 are not accurate and are unfair."

4-A. There were no deficiencies as the Office purports. The Appellant has already completely addressed this. As stated in the previous Swartz Declaration in a Petition before the Office file but not answered,

"2. The Decision is not accurate in that there were no deficiencies as the Office purports. I have already addressed this including in my missive "Appellant's Notice to the Board", dated Nov, 18, 2003."

4-B. Furthermore, as stated and proven in "Appellant's Notice to the Board", dated Nov, 18, 2003, and as confirmed by the record,

"The Office is wrong for at least six reasons. First, Appellant respectfully disputes this because there are no "deficiencies". Second, Appellant respectfully disputes this because Applicant did NOT fail to correct them.

Third, Appellant respectfully disputes this because the Office is nonspecific, consistent with confabulation (vide supra, vide infra).

Fourth, Appellant respectfully disputes this because this was discussed on pages 2 though 5 of said Notice.

Fifth, Appellant already made changes because the Office demanded it in the previous first Communication, as discussed above. Appellant took the time and money to make new briefs in triplicate.

Sixth, Appellant respectfully disputes this because NONE of this has been addressed by the Office in said "Notice of Compliance by Appellant", dated Sept. 17, 2003, pages 2 though 5."

["Appellant's Notice to the Board", dated Nov, 18, 2003]

4-C. As stated in the Swartz Declaration,

"3. The Decision is not accurate in that all claims were discussed to the best of my *pro se* ability in each of the relevant sections of 112 first and second paragraph, 102 and 101, and were explicitly discussed in detail in each of the Appeal Briefs with respect to each and every one of the Examiner's rejections, and further organized with respect to each and every issue which the Examiner brought up with respect to each claim the Examiner cited in each rejection."

4-D. In the Appeal Brief of January 4, 2004, despite the above disingenuous statement in the Decision, all claims were explicitly discussed in detail and do comply with 37 CFR 1.192(c) as will be now demonstrated. Perhaps the Office has the noted the following inadvertently or unintentionally.

4-E. In the Appeal Brief of January 4, 2004, regarding 35 USC 112, first paragraph, Claims 1-10, 12-19, 21, and 22 were explicitly mentioned and fully discussed on pages 21 through 68, and on pages 68 through 69, and on pages 70 through 84, and on pages 86 through 87, and on pages 88 through 91 of the Argument section.

In addition, further discussion of the independent claims was made on page 21 through 22. All claims were explicitly cited on pages 21 and 91.

Attention is directed to the fact that these are ALL CLAIMS which were rejected, and that each of the rejected claims was fully argued with respect to each and every issue raised by the examiner with respect to the Examiner's arguments of each cited claim. This was done in an organized manner for judicial economy and to maximize clarity for the Board.

This was consistent with 37 CFR 1.192(c). This was consistent with MPEP 1206 which states: **"An exception to the requirement that all the items specified in 37 CFR 1.192(c) be included in the brief is made if the application or reexamination proceeding is being prosecuted by the appellant *pro se*".** This was also consistent with the fact that the U.S. Supreme Court has ruled that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

4-F. In the Appeal Brief of January 4, 2004, regarding 35 USC 112, second paragraph, Claims 1-10, 12-19, 21, and 22 were explicitly mentioned and fully discussed on pages 92 through 95 of the Argument section. Claims 1, 10, and 21 for which a separate argument was given by the Examiner were discussed separately on pages 93 through 94 of the Argument section.

In addition, further discussion of the independent claims was made on page 92.

Attention is directed to the fact that these are ALL CLAIMS which were rejected, and that each of the rejected claims was fully argued with respect to each and every issue raised by the examiner with respect to the Examiner's arguments of each cited claim. This was done in an organized manner for judicial economy and to maximize clarity for the Board.

This was consistent with 37 CFR 1.192(c). This was consistent with MPEP 1206 which states: "**An exception to the requirement that all the items specified in 37 CFR 1.192(c) be included in the brief is made if the application or reexamination proceeding is being prosecuted by the appellant *pro se***". This was also consistent with the fact that the U.S. Supreme Court has ruled that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

4-G. In the Appeal Brief of January 4, 2004, regarding 35 USC 102,

Claims 1-10, 12-19, 21, 22 were explicitly mentioned and fully discussed on pages 100 and 101 of the Argument section..

Claims 1-10, 12-19, and 21-22 were explicitly mentioned and fully discussed on pages 101 through 112 of the Argument section.

Claims 1, 2, 4, 5, 7, 10, 13, 15, 16 were explicitly mentioned and fully discussed on pages 110 through 117 of the Argument section.

Claims 1-8 and 13-16 were explicitly mentioned and fully discussed on pages 113 through 120 of the Argument section.

In addition, further discussion of the independent claims was made on page 100. All claims were explicitly cited and discussed on pages 100, 101, and 129-130.

Attention is directed to the fact that these are ALL CLAIMS which were rejected, and that each of the rejected claims was fully argued with respect to each and every issue raised by the examiner with respect to the Examiner's arguments of each cited claim. This was done in an organized manner for judicial economy and to maximize clarity for the Board.

This was consistent with 37 CFR 1.192(c). This was consistent with MPEP 1206 which states: "**An exception to the requirement that all the items specified in 37**

CFR 1.192(c) be included in the brief is made if the application or reexamination proceeding is being prosecuted by the appellant *pro se*". This was also consistent with the fact that the U.S. Supreme Court has ruled that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

4-H. In the Appeal Brief of January 4, 2004, regarding 35 USC 101, Claims 1-10, 12-19, 21, and 22 were explicitly mentioned and fully discussed on pages 131 through 142 of the Argument section.

In addition, further discussion of the independent claims was made on page 131. Attention is directed to the fact that these are ALL CLAIMS which were rejected, and that each of the rejected claims was fully argued with respect to each and every issue raised by the examiner with respect to the Examiner's arguments of each cited claim. This was done in an organized manner for judicial economy and to maximize clarity for the Board.

This was consistent with 37 CFR 1.192(c). This was consistent with MPEP 1206 which states: **"An exception to the requirement that all the items specified in 37 CFR 1.192(c) be included in the brief is made if the application or reexamination proceeding is being prosecuted by the appellant *pro se*".** This was also consistent with the fact that the U.S. Supreme Court has ruled that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

4-I. In the Appeal Brief of October 24, 2003, despite the above disingenuous statement in the Decision, all claims were explicitly discussed in detail and do comply with 37 CFR 1.192(c) as will be now demonstrated.

In the Appeal Brief of October 24, 2003, regarding 35 USC 101, Claims 1-10, 12-19, 21, and 22 were explicitly mentioned and fully discussed on pages 127 through 137 of the Argument section. Attention is directed to the fact that these are ALL CLAIMS which were rejected, and that each of the rejected claims was fully argued with respect to each and every issue raised by the examiner with respect to the Examiner's arguments of each cited claim. This was done in an organized manner for judicial economy and to maximize clarity for the Board.

This was consistent with 37 CFR 1.192(c). This was consistent with MPEP 1206 which states: **"An exception to the requirement that all the items specified in 37 CFR 1.192(c) be included in the brief is made if the application or reexamination proceeding is being prosecuted by the appellant *pro se*".** This was

also consistent with the fact that the U.S. Supreme Court has ruled that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

4-J. In the Appeal Brief of October 24, 2003, regarding 35 USC 112, first paragraph, Claims 1-10, 12-19, 21, and 22 were explicitly mentioned and fully discussed on pages 22 through 28, and on pages 29 through 61, and on pages 68 through 69, and on pages 70 through 73, and on pages 74 through 77, and on pages 78 through 84, and on pages 86 through 87 of the Argument section. Attention is directed to the fact that these are ALL CLAIMS which were rejected, and that each of the rejected claims was fully argued with respect to each and every issue raised by the examiner with respect to the Examiner's arguments of each cited claim. This was done in an organized manner for judicial economy and to maximize clarity for the Board.

This was consistent with 37 CFR 1.192(c). This was consistent with MPEP 1206 which states: "**An exception to the requirement that all the items specified in 37 CFR 1.192(c) be included in the brief is made if the application or reexamination proceeding is being prosecuted by the appellant *pro se***". This was also consistent with the fact that the U.S. Supreme Court has ruled that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

4-K. In the Appeal Brief of October 24, 2003, regarding 35 USC 112, second paragraph, Claims 1-10, 12-19, 21, and 22 were explicitly mentioned and fully discussed on pages 92 through 94 of the Argument section.. Claims 1, 10, and 21 for which a separate argument was given by the Examiner were discussed separately on pages 92 through 95 of the Argument section. Attention is directed to the fact that these are ALL CLAIMS which were rejected, and that each of the rejected claims was fully argued with respect to each and every issue raised by the examiner with respect to the Examiner's arguments of each cited claim. This was done in an organized manner for judicial economy and to maximize clarity for the Board.

This was consistent with 37 CFR 1.192(c). This was consistent with MPEP 1206 which states: "**An exception to the requirement that all the items specified in 37 CFR 1.192(c) be included in the brief is made if the application or reexamination proceeding is being prosecuted by the appellant *pro se***". This was also consistent with the fact that the U.S. Supreme Court has ruled that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

4-L. In the Appeal Brief of October 24, 2003, regarding 35 USC 102, Claims 1-10, 12-19, 21, 22 were explicitly mentioned and fully discussed on pages 99 of the Argument section..

Claims 1-10, 12-19, and 21-22 were explicitly mentioned and fully discussed on pages 100 through 110 of the Argument section.

Claims 1, 2, 4, 5, 7, 10, 13, 15, 16 were explicitly mentioned and fully discussed on pages 110 through 117 of the Argument section.

Claims 1-8 and 13-16 were explicitly mentioned and fully discussed on pages 117 through 125 of the Argument section.

Attention is directed to the fact that these are ALL CLAIMS which were rejected, and that each of the rejected claims was fully argued with respect to each and every issue raised by the examiner with respect to the Examiner's arguments of each cited claim. This was done in an organized manner for judicial economy and to maximize clarity for the Board.

This was consistent with 37 CFR 1.192(c). This was consistent with MPEP 1206 which states: "**An exception to the requirement that all the items specified in 37 CFR 1.192(c) be included in the brief is made if the application or reexamination proceeding is being prosecuted by the appellant *pro se***". This was also consistent with the fact that the U.S. Supreme Court has ruled that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

4-M. In summary, Appellant complied with item (8) in each Brief. As stated in the Swartz Declaration,

"4. I have made every attempt to comply with 37 CFR 1.192(c) such that each of the rejected claims was fully argued with respect to each and every issue raised by the examiner with respect to the Examiner's arguments of each cited claim. This was done in an organized manner for judicial economy and to maximize clarity for the Board."

4-N. In addition MPEP 1206 states: "**An exception to the requirement that all the items specified in 37 CFR 1.192(c) be included in the brief is made if the application or reexamination proceeding is being prosecuted by the appellant *pro se***".

4-O. In addition, the U.S. Supreme Court has ruled that any *pro se* litigant is entitled to less stringent standards [U.S. Rep volume 404, pages 520-521 (72)].

4-P. Thus, the examiner's action of March 31, 2004 was completely in error, and the Decision was in error and should be corrected.

4-Q. President Bush has stated: **"Keeping America competitive requires affordable energy. Here we have a serious problem: America is addicted to oil, which is often imported from unstable parts of the world. The best way to break this addiction is through technology. ... To change how we power our homes and offices, we will invest more in zero-emission coal-fired plants; revolutionary solar and wind technologies; and clean, safe nuclear energy"**.

5. Second, in the light of the above, received by the Office and the Director and ignored [Exhibits "C", "D" and "E"], these statements in the just received Notices were made to obstruct justice. As stated in the Swartz Declaration,

"It is unfair that the Office and the Director have ignored the received Petition [confirmed by Exhibits "C", "D" and "E"]. That these Notices were rushed out after the Office received a Petition to the Commissioner, but before it was addressed, is consistent again with the appearance of impropriety and obstruction of justice."

The Office receive a Petition to the Commissioner, and after said Petition was received, said Notices were mailed. This is obstruction of justice, denial of Appellant's civil rights, and a violation of MGL 93A, and a continued violation of Title 18 U.S.C., Sections 1831 and 1832.

Attention is directed to the fact that since Appellant's first Appeal Brief was filed, there has been a systematic delay to send this to the Board for two years which might be perceived somewhere between an obstruction of justice and egregious lack of ethics with the appearance of impropriety.

Given the obstruction of justice in the just-received Notices made after receipt of documents demonstrating the Office was wrong [Exhibits "C", "D" and "E"], attention of the Board, and the Court, is directed to the simple fact that each one of the matters discussed above [4-A through 4-Q] is likely sufficient for a legal action.

WHEREFORE, given the evidence in the record, cited in this Petition, and supported by Affidavit, the Applicant respectfully requests relief from this improper action by Mr. Donald T. Hajec, Director. Appellant (previously Applicant) is entitled to transfer of his Appeal Brief to the Board, and failure to do such given the record, given the substantively unresponded to missives from the Applicant (and now Appellant), especially in the light of either MPEP 1206 and/or U.S. Rep volume 404, pages 520-521 (72) indicate the appearance of impropriety and herald an obstruction of justice inconsistent with the Rules of the Patent office, federal law, and the directives of the US Constitution, the US Congress and the President of the United States.

Respectfully submitted,



Mitchell Swartz, ScD, MD, EE
Post Office Box 81135
Wellesley Hills, Mass. 02481

Certificate Of Mailing [37 CFR 1.8(a)]

June 10, 2006

To Whom it Does Concern:

I hereby certify that this correspondence will be deposited with the United States Postal Service by First Class Mail, postage prepaid, in an envelope addressed to

The Commissioner for Patents

Alexandria, VA 22313-14501

on the date below.

Thank you.

Sincerely,

June 10, 2006



M.R. Swartz



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/750,765	12/28/2000	Mitchell R. Swartz		8044

7590 06/07/2006

Mitchell R. Swartz, ScD, EE, MD
16 Pembroke Road
Weston, MA 02493

EXAMINER

PALABRICA, RICARDO J

ART UNIT PAPER NUMBER

3663

DATE MAILED: 06/07/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

EXHIBIT "A"



UNITED STATES PATENT AND TRADEMARK OFFICE

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United States Patent and Trademark Office
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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

PALABRICA, RICARDO J

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EXHIBIT "B"

The date stamp of the United States Patent Office
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1. Petition to the Commissioner pursuant to
37 C.F.R. 1.181 with a Certificate Of Mailing,
2. and a Declaration Supporting Petition, and
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Serial No.: 09/ 750,765 Filed: 12/28/00
Thank you.

May 25, 2006 Dr. Mitchell Swartz



EXHIBIT "C"

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2. Article

7003 1680 0004 8104 3636

(Trans.)

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7003 1680 0004 8104 4220

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EXHIBIT "E"



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EXAMINER

PALABRICA, RICARDO J

ART UNIT

PAPER NUMBER

3663

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EXHIBIT "A"



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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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EXAMINER

PALABRICA, RICARDO J

ART UNIT PAPER NUMBER

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EXHIBIT "B"

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Serial No.: 09/ 750,765 Filed: 12/28/00
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May 25, 2006 Dr. Mitchell Swartz



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2. Article
 (Trans)

7003 1680 0004 8104 3636

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1. Article Addressed to:

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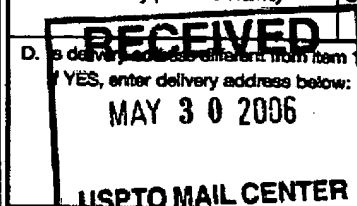
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2. Article Number
 (Transfer from service)

7003 1680 0004 8104 4220

EXHIBIT "D"

EXHIBIT "E"